



**EXPORT-IMPORT BANK OF THE UNITED STATES**

**12 CFR Part 404**

**[EXIM-OIG-2012-0010]**

**RIN 3048-AA02**

**Privacy Act of 1974: Implementation of Exemptions; Export-Import Bank of the United States Office of Inspector General—Office of Inspector General Investigative Records**

**AGENCY:** The Export-Import Bank of the United States

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Export-Import Bank of the United States (hereafter known as "Ex-Im Bank"), Office of Inspector General (hereafter known as "OIG" or "Ex-Im Bank OIG") is giving concurrent notice of a new system of records entitled, "EIB-35-Office of Inspector General Investigative Records." In this proposed rulemaking, Ex-Im Bank proposes to exempt portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

**DATES:** Comments should be received on or before (insert 60 days after publication) to be assured of consideration.

**ADDRESSES:** You may submit comments, identified by Docket Number EIB-2011-0010 by one of the following methods:

- Electronically through the eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments. Please search for EIB-2011-0010.
- By Mail/Hand Delivery/Courier: Alberto Rivera-Fournier, Ex-Im Bank, Office of Inspector General/811 Vermont Avenue, NW., Rm. 976, Washington, DC 20571. Please allow sufficient time for mailed comments to be received before the close of the comment period.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received before the end of the comment period will be posted on <http://www.regulations.gov> for public viewing, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Alberto Rivera-Fournier, Ex-Im Bank, Office of Inspector General, 811 Vermont Avenue, NW, Rm. 976, Washington, DC 20571 or by telephone (202) 565-3908 or facsimile (202) 565-3988.

**SUPPLEMENTARY INFORMATION:** Concurrently with the publication of this notice of proposed rulemaking, the Ex-Im Bank OIG is publishing a new system of records notice that is subject to the Privacy Act of 1974, 5 U.S.C. 552a. The system is entitled, "EIB-35-Office of Inspector General Investigative Records". The system of records is necessary in order for Ex-Im Bank OIG to carry out its investigative responsibilities pursuant to the Inspector General Act of 1978, as amended.

Ex-Im Bank is proposing to exempt this system, in part, from certain provisions of the Privacy Act. The OIG is responsible for conducting and supervising independent and objective audits, inspections, and investigations of the programs and operations of Ex-Im Bank. The OIG promotes economy, efficiency, and effectiveness within the Ex-Im Bank and prevents and detects fraud, waste, and abuse in its programs and operations. The OIG's Office of Investigations investigates allegations of criminal, civil,

and administrative misconduct involving Ex-Im Bank employees, contractors, programs and activities. These investigations can result in criminal prosecutions, fines, civil monetary penalties, and administrative sanctions.

The new system of records assists the OIG with receiving and processing allegations of violation of criminal, civil, and administrative laws and regulations relating to Ex-Im Bank employees, contractors, and other individuals and entities associated with Ex-Im Bank. The system includes both paper investigative files and the "Inspector General Information System" (IGIS), an electronic case management and tracking information system, which also generates reports. IGIS allows the OIG to manage information provided during the course of its investigations, and, in the process, to facilitate its management of investigations and investigative resources.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of

any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of Ex-Im Bank by complying with Ex-Im Bank Privacy Act regulations, 12 CFR Part 404.

The Privacy Act requires each agency to publish in the Federal Register a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals in finding such files within the agency.

The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

Ex-Im Bank is claiming exemptions from certain requirements of the Privacy Act for the "EIB-35- Office of Inspector General Investigative Records" because information in this system of records relates to official law enforcement activities. These exemptions are needed to protect information relating to Ex-Im Bank OIG activities from disclosure to subjects of investigations and others related to these activities.

Specifically, the exemptions are required to preclude subjects of investigations from frustrating the investigative process; to avoid disclosure of investigative techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure Ex-Im Bank OIG's ability to obtain information from third parties and other sources; to protect the privacy of third parties; to fulfill commitments made to protect the confidentiality of sources; and to safeguard confidential information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

The exemptions proposed here are standard law enforcement exemptions exercised by a large number of Federal law

enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

#### **List of Subjects in 12 CFR Part 404**

##### Information Disclosure

For the reasons stated in the preamble, Ex-Im Bank proposes to amend chapter IV of Title 12, Code of Federal Regulations, as follows:

#### **PART 404—INFORMATION DISCLOSURE**

1. The authority citation for Part 404 continues to read as follows:

Authority 5 U.S.C. 552 and 552a. Section 404.7 also issued under E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235. Section 404.21 also issued under 5

U.S.C. 552a note. Subpart C also issued under 5 U.S.C.  
301, 12 U.S.C. 635.

**Subpart B- Access to Records Under the Privacy Act of 1974**

2. Add §404.24 to subpart B to read as follows:

**§ 404.24- Exemptions: EIB-35-Office of Inspector General**  
**Investigative Records**

(a) *Criminal Law Enforcement.* (1) *Exemption.* Under the authority granted by 5 U.S.C. 552a(j)(2), Ex-Im Bank hereby exempts the system of records entitled "EIB-35- Office of Inspector General Investigative Records" from the provisions of 5 U.S.C. 552a(c)(3), (c)(4), (d)(1) through (4), (e)(1) through (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f), and (g) because the system contains information pertaining to the enforcement of criminal laws. "EIB-35- Office of Inspector General Investigative Records" is maintained by the Ex-Im Bank Office of Inspector General ("OIG" or "Ex-Im Bank OIG.")

(2) *Reasons for exemption.* The reasons for asserting this exemption are:



(i) Disclosure to the individual named in the record pursuant to 5 U.S.C. 552a(c)(3), (c)(4), or (d)(1) through (4) could seriously impede or compromise the investigation by alerting the target(s), subjecting a potential witness or witnesses to intimidation or improper influence, and leading to destruction of evidence. Disclosure could enable suspects to take action to prevent detection of criminal activities, conceal evidence, or escape prosecution.

(ii) Application of 5 U.S.C. 552a(e)(1) is impractical because the relevance of specific information might be established only after considerable analysis and as the investigation progresses. Effective law enforcement requires the OIG to keep information that may not be relevant to a specific OIG investigation, but which may provide leads for appropriate law enforcement and to establish patterns of activity that might relate to the jurisdiction of the OIG and/or other agencies.

(iii) Application of 5 U.S.C. 552a(e)(2) would be counterproductive to the performance of a criminal investigation because it would alert the individual to the existence of an investigation. In any investigation, it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to

verify the evidence necessary for successful litigation or prosecution.

(iv) Application of 5 U.S.C. 552a(e)(3) could discourage the free flow of information in a criminal law enforcement inquiry.

(v) The requirements of 5 U.S.C. 552a(e)(4)(G) and (H), and (f) would be counterproductive to the performance of a criminal investigation. To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual, or to grant access to an investigative file could interfere with investigative and enforcement proceedings, deprive co-defendants of a right to a fair trial or other impartial adjudication, constitute an unwarranted invasion of personal privacy of others, disclose the identity or confidential sources, reveal confidential information supplied by these sources and disclose investigative techniques and procedures. Nevertheless, Ex-Im Bank OIG has published notice of its notification, access, and contest procedures because access may be appropriate in some cases.

(vi) Although the OIG endeavors to maintain accurate records, application of 5 U.S.C. 552a(e)(5) is impractical because maintaining only those records that are accurate, relevant, timely, and complete and that assure fairness in determination is contrary to established investigative techniques. Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, become more pertinent as an investigation progresses.

(vii) Application of 5 U.S.C. 552a(e)(8) could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(viii) The provisions of 5 U.S.C. 552a(g) do not apply to this system if an exemption otherwise applies.

(b) *Other Law Enforcement.* (1) *Exemption.* Under the authority granted by 5 U.S.C. 552a(k)(2), Ex-Im Bank hereby exempts the system of records entitled "EIB-35- Office of Inspector General Investigative Records" from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) and (H), and (f) for the same reasons as stated in paragraph (a)(2) of this section, that is, because the system contains investigatory material compiled

for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2).

(2) *Reasons for exemption.* The reasons for asserting this exemption are because the disclosure and other requirements of the Privacy Act could substantially compromise the efficacy and integrity of OIG operations. Disclosure could invade the privacy of other individuals and disclose their identity when they were expressly promised confidentiality. Disclosure could interfere with the integrity of information which would otherwise be subject to privileges (see, e.g., 5 U.S.C. 552(b)(5)), and which could interfere with other important law enforcement concerns (see, e.g., 5 U.S.C. 552(b)(7)).

(c) *Federal Civilian or Contract Employment.* (1) *Exemption.* Under the authority granted by 5 U.S.C. 552a(k)(5), Ex-Im Bank hereby exempts the system of records entitled "EIB-35-Office of Inspector General Investigative Records" from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) and (H), and (f) because the system contains investigatory material compiled for the purpose of determining eligibility or qualifications for federal civilian or contract employment.

(2) *Reasons for exemption.* The reasons for asserting this exemption are the same as described in paragraph (a)(2) of this section.

Date: May 1, 2012

Sharon A. Whitt

Agency Clearance Officer

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